

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

**JAN - 2 2003**

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

2002 Biennial Regulatory Review – Review  
of the Commission's Broadcast Ownership  
Rules and Other Rules Adopted Pursuant to  
Section 202 of the Telecommunications  
Act of 1996

**MB** Docket No. 02-277

Cross-Ownership of Broadcast Stations  
and Newspapers

**MM** Docket No. 01-235

Rules and Policies Concerning Multiple  
Ownership of Radio Broadcast Stations  
in Local Markets

**MM** Docket No. 01-317

Definition of Radio Markets

**MM** Docket No. 00-244

**COMMENTS OF MEDIA GENERAL, INC.**

**(Volume 1: Comments and Appendices 1-8)**

John R. Feore, Jr.  
Michael D. Hays  
M. Anne Swanson  
Kevin P. Latek

Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036-6802  
(202) 770-2531

Its Attorneys

January 2, 2003

No. of Copies rec'd 2  
List ABCDE

## TABLE OF CONTENTS

	Page
SUMMARY .....	iv
I Introduction .....	1
II. Media General's Experience and a Review of the History of the FCC's Regulation of Media Ownership and the Current Media Marketplace Show That Repeal of the Newspaper/Broadcast Cross-Ownership Rule in All Markets Is Long Overdue .....	6
A. Media General Has Pioneered Convergence in Medium and Small Markets .....	6
B. The Newspaper/Broadcast Cross-Ownership Rule Is the Only Media Ownership Rule That Has Gone Unmodified for Almost Three Decades, and the Record Already Before the Commission on the Rule Is More Than Sufficient To Support Complete Repeal .....	8
C. Changes in the Media Marketplace in the Last Twelve Months <i>Make</i> the Need for Repeal Even More Compelling.....	13
1. Media General's Converged Facilities Continue To Bring Better, Faster, and Deeper Local News and Other Civic Improvements to Their Communities, Proving That Common Ownership Yields Tangible Public Interest Benefits .....	13
2. Media General's Convergence Markets Continue To Benefit From a Wide Variety of Media Outlets and Owners.....	21
III. Recent Court Decisions Further Compel Repeal of the Newspaper/Broadcast Cross-Ownership Rule .....	25
A. Section 202(h) Calls for Regulatory Reform and Establishes a More Exacting Standard for Retention Than For Promulgation of the Commission's Rules, a Standard That Requires Repeal of the Newspaper/Broadcast Cross-Ownership Rule .....	26
B. Under Both <i>Fox</i> and <i>Sinclair</i> , Any Action Short of Repeal Would Not Only Violate Section 202(h) But Would Be Arbitrary and Capricious in Violation of the Administrative Procedure Act .....	30
C. <i>Fox</i> and <i>Sinclair</i> Allow, and Indeed Implicitly Invite, the FCC To Find That Spectrum Scarcity No Longer Exists.....	34
D. With the Demise of the Spectrum Scarcity Rationale, the Newspaper/Broadcast Cross-Ownership Rule Must Be Judged Under More Restrictive First Amendment Standards.....	36
IV. The FCC's Own Recently Released Media Ownership Studies <b>Also</b> Compel Repeal of the Rule .....	38

## TABLE OF CONTENTS

(continued)

V.	Diversity of Ownership Never Did and Now Clearly Does Not Bear a Credible Link to Diversity of Viewpoint, and the Commission’s Responsibility To Foster Competition, Localism, and Innovation Requires Repeal of the Rule .....	56
A.	Given That Diversity of Ownership Is, at Best, an “Aspirational” Proxy for Diversity of Viewpoint, the FCC Cannot Reasonably Determine That the Newspaper/Broadcast Cross-Ownership Rule Is Necessary in the Public Interest .....	56
B.	Repealing the Archaic Newspaper/Broadcast Cross-Ownership Ban Would Not Harm Competition in Local Markets, and <i>Fox</i> Makes Clear That the FCC Must Consider Competition from New Media Services in Evaluating Whether the Newspaper/Broadcast Cross-Ownership Rule Is Necessary in the Public Interest .....	61
C.	Repeal of the Newspaper/Broadcast Cross-Ownership Rule Would Advance the Communications Act’s Requirement That FCC Actions Promote Localism .....	65
D.	Innovation, Another Policy Goal in the Communications Act, Requires Repeal of the Newspaper/Broadcast Cross-Ownership Rule.....	69
VI.	Repeal of the Newspaper/Broadcast Cross-Ownership Rule Is Required for All Markets, Regardless of Size.....	71
VII.	Conclusion .....	75

## TABLE OF CONTENTS

(continued)

- Appendix 1 Television Stations Owned by Media General, Inc.
- Appendix 2 Daily Newspapers Owned by Media General, Inc.
- Appendix 3 James K. Gentry, Ph.D., *Statement*, December, 2002.
- Appendix 4 Awards Given to Media General, Inc.'s Broadcast, Internet and Newspaper Properties in the Tampa, Florida DMA.
- Appendix 5 David Pritchard, Chair, Department of Journalism and Mass Communications, University of Wisconsin-Milwaukee, *The Expansion of Diversity: A Longitudinal Study of Local Media Outlets in Five American Communities*, March, 2002.
- Appendix 6 Temporal Comparison of Television Stations and Cable Penetration (1975 to 2001).
- Appendix 7A Temporal Comparison of Radio Stations and Cable Penetration (1975 to 2001).
- Appendix 7B Temporal Comparison of Radio Stations and Cable Penetration (1994 to 2000).
- Appendix 8 Percent of Households with Computers and Internet Access, by State, 2002,

### Volume 2

- Appendix 9 Availability of Media Outlets in the Tampa/St. Petersburg, Florida, DMA.
- Appendix 10 Availability of Media Outlets in the Roanoke-Lynchburg, Virginia, DMA
- Appendix 11 Availability of Media Outlets in the Tri-Cities, Tennessee/Virginia, DMA
- Appendix 12 Availability of Media Outlets in the Florence-Myrtle Beach, South Carolina. DMA.
- Appendix 13 Availability of Media Outlets in the Columbus, Georgia, DMA
- Appendix 14 Availability of Media Outlets in the Panama City, Florida, DMA.

## SUMMARY

Twenty-eight years is a long time to ban an industry from entering a market based on nothing more than a conjectural “hoped-for” gain in diversity and absolutely no proof of any competitive harm. Yet, by the time the Commission acts in this proceeding, that is how long the newspaper industry will have been prohibited by the newspaper/broadcast cross-ownership rule from purchasing broadcast stations. The time is long overdue for repeal of the newspaper/broadcast cross-ownership rule in all markets, particularly given the recent liberalization of all other FCC media ownership regulations. This result is also compelled by drastic changes in the last quarter century in the media marketplace, numerous empirical studies already before the FCC showing public interest benefits and a complete lack of any harm from cross-ownership, and applicable legal standards. There is no countervailing factual or legal reason justifying retention of the newspaper/broadcast cross-ownership rule in any market, large or small.

The wholesale liberalization of all other FCC ownership rules presents a compelling argument that the newspaper/broadcast cross-ownership rule should be eliminated. The newspaper/broadcast cross-ownership rule is the only media ownership rule that has gone unmodified for almost three decades. The national radio cap has disappeared, and the national television cap has been loosened. The local radio ownership rules now allow ownership of up to eight stations per market, and television duopolies are abundant. No longer is cross-ownership of cable systems and television stations prohibited anywhere.

The newspaper/broadcast cross-ownership rule stands alone as the only ownership rule that restricts the activity of an industry that the FCC does not regulate, the newspaper industry. This discriminatory treatment of newspaper owners vis-a-vis other regulated media players.

which now face lessened or no ownership restrictions, and vis-a-vis all other unregulated industries, which may buy broadcast stations, must cease.

Not only recent regulatory changes, but dramatic market changes compel repeal. The media marketplace is vastly different than 1975 when the rule **was adopted**. Consumers in all markets now have access to cable television, DBS systems, low-power FM and television stations, a wide array of specialty publications, weekly newspapers and other publications of varying frequency, local magazines, and sometimes wireless cable. Most recently, consumers in all markets have seen the launch of a profusion of Internet sites, many of which offer locally-originated content of all types.

Media General has witnessed this explosive growth in outlets and competitors in the one grandfathered and five other markets where it owns newspaper-broadcast combinations. At the same time, as documented at length in these *comments* and *previous* Media General filings, consumers in these six markets have benefited from the unique public interest benefits Media General's converged properties have been able to offer. With convergence, Media General has been able to deliver better, faster and deeper local news. With convergence, Media General has melded all the advantages of its print, broadcast, and on-line operations to provide multiple channels and streams of useful information when, where, and how consumers want it.

As discussed in these comments, numerous empirical studies conducted by Media General, the FCC itself, and others show that newspaper-ownership of broadcast stations results in enhanced news and public interest programming. For instance, one study submitted by Media General found that, when the quantity of non-entertainment programming presented on average by all stations in each of its six converged markets was compared to the average for all stations in the next largest DMA, in five out of six comparisons, the stations in the converged markets

broadcast considerably more non-entertainment programming. The Commission's own study that its staff conducted in 1973 at the time the rule was adopted found similar results. This past fall, another FCC-issued study found newspaper-owned television stations provide higher quality and quantities of local news than other **network** affiliates.

The six of the twelve media ownership studies recently released by the FCC that tangentially relate to the newspaper/broadcast cross-ownership rule also compel its repeal.. They show increased use of non-traditional media, particularly new subscription video services and the Internet; echo the same outlet and ownership growth Media General has seen in its own markets; demonstrate no **link** between common ownership and the presentation of campaign coverage; chronicle the higher quality and greater quantity of news and public affairs programming presented by newspaper-owned stations; and demonstrate no harm from repeal in terms of either advertising substitutability among media or consumer substitutability in use of varying outlets.

There was no competitive harm documented when the newspaper/broadcast cross-ownership rule was adopted, and studies recently put before the FCC show the complete lack of any competitive need for the rule. One broad study analyzed structural indications of competition across a sample of 21 **DMAs** of all market sizes between 1975 and 1997, and again in 2000. In examining competition among newspapers, television, and radio in the sale of advertising, arguably an artificially narrow market, it found ownership concentration in 20 of the 21 **DMAs** at issue had decreased or remained unchanged since 1975 despite adoption of the 1996 Telecommunications Act. Additional empirical studies conducted first across 1400-plus newspapers in all markets and then focused only on newspapers in smaller markets found cross-ownership did not lead to higher advertising prices.

Faced with this mounting evidence of cross-ownership benefits and the complete lack of any demonstrated harm, the FCC has no choice under governing legal standards but to repeal the rule. Section 202(h) of the 1996 Telecommunications Act requires the FCC to review its ownership rules to determine whether they are “necessary” in the public interest as the result of competition and then repeal or modify any it finds are no longer in the public interest. The term “necessary” must be interpreted as meaning “essential” or “indispensable” in the public interest as a result of competition. This interpretation comports with the deregulatory thrust of the Act, the intent of Section 202 as a whole, and Judicial interpretation of similar provisions.

Recent court decisions, *Fox Television Stations, Inc.* and *Sinclair Broadcasting Group, Inc.*, demonstrate a new judicial impatience with the FCC’s review of its media ownership rules. These decisions interpret Section 202(h) as creating a presumption in favor of repeal and lead inescapably to the conclusion that Section 202(h) establishes a more exacting standard for retention than for promulgation of the FCC’s rules. Under these decisions, it is arbitrary and capricious to continue restricting newspaper/broadcast cross-ownership while allowing cable television/television cross-ownership, local television duopolies, and broadcast ownership by a wide variety of other unregulated media such as the Internet. Given all the record evidence demonstrating the benefits of repeal and the lack of any evidence showing retention of the rule to be “necessary,” continuation of the rule will unnecessarily weaken any package of ownership rules that the FCC ultimately retains. In addition, these decisions implicitly invite the FCC to find that spectrum scarcity no longer exists, a finding that will conclusively render the newspaper/broadcast cross-ownership rule unsustainable under the First Amendment.

Finally, the newspaper/broadcast cross-ownership rule also disserves the FCC’s traditional policy goals. Diversity of ownership never did and now clearly does not bear a



credible link to diversity of viewpoint. Nonetheless, if the FCC continues to analyze the rule in terms of diversity, it will find that it prevents newspapers from helping to reinvigorate struggling local news operations, many of which have had to go dark due to the escalating costs of local news production and the economic downturn. The Commission's goal of fostering competition will also not be harmed by repeal of the **rule**, particularly when the FCC includes the profusion of new media in any competitive analysis. At the same time, repeal of **the** rule will advance localism by bringing new local resources to broadcast news operations and stimulate innovation by allowing new synergies to emerge.

These benefits of repeal should be available in all markets, large and small. The empirical studies in the record show absolutely no reason to differentiate or draw any sort of line based on market size.. Not only is good local journalism expensive to produce and deliver in all markets, hut local media players, such as Media General, face increasing competition for audiences and advertisers from large national entities delivering content in all markets. Repeal of the newspaper/broadcast cross-ownership rule will ensure that locally-based entities focused on delivering a local product can compete against these larger institutions who have already benefited from recent liberalizations in other Commission rules. Equally important, locally-focused media in small markets and the consumers they serve are just as entitled to the benefits of convergence as their counterparts in larger markets

Riddled with infirmities, the rule should be repealed in all markets. The Commission should act quickly and seize this opportunity to reverse this statutorily indefensible and unconstitutional ban that is inhibiting the delivery of enhanced and expanded local news and disserving the public interest

**DOCUMENT AVAILABLE  
IN THE LEAD  
DOCKET/RULEMAKING**

SEE DOCKET NO. *02-277* FOR THE DOCUMENT.